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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/321,090	05/28/1999	RICHARD L. FRANK	ORA99-03-(OI	5972
21005	7590	05/14/2004	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			BENSON, WALTER	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/321,090	FRANK ET AL. <i>JK</i>
	Examiner Walter Benson	Art Unit 2858

-- The MAILING DATE of this communication app ars on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4,9-13,19-21,23,26,27,29-31 and 33-50 is/are allowed.
- 6) Claim(s) 1-3,5,14,15,22,24,25,28 and 32 is/are rejected.
- 7) Claim(s) 6-8 and 16-18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) <i>M</i> Paper No(s)/Mail Date <u>3/11/04, 5/01/03 (sheet 2 of 2)</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

1. The declaration filed on 3/11/04 under 37 CFR 1.131 is sufficient to overcome the MacKenzie (6,363,495) reference.

2. Claims 1-50 are pending.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5, 14, 15, 22, 24, 25, 28, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Wipfel et al. (US Patent No. 6,151,688 and Wipfel hereinafter).

5. As to claims 1, 5, 22, 24, and 25, Wipfel discloses an apparatus and method for managing membership of nodes in a computer network cluster, comprising:

defining a shareable storage device to store data for a network (col. 5, lines 32-55);

always granting membership in a network cluster to a node if the node has access to the shareable storage device (col. 8, lines 52-59).

6. As to claims 2, 14, 28, and 32, Wipfel discloses an apparatus and method for managing membership of nodes in a computer network cluster, the method comprising:

defining a shareable storage device to store data for a computer network, the shareable storage device being accessible by each node in a computer network cluster (col. 8, lines 32-35); monitoring node membership in the computer network cluster based on the accessibility of the shareable storage device to each node, including removing a node from the computer network cluster in response to the node losing access to the shareable storage device (col. 8, lines 47-50).

7. As to claims 3 and 15, Wipfel discloses an apparatus and method for managing membership of nodes in a computer network cluster, the method comprising:

ceasing operation of the network cluster if no node has access to the shareable storage device (col. 9, lines 21-27).

***Allowable Subject Matter***

8. Claims 4, 9-13, 19, 20, 21, 23, 26, 27, 29, 30, 31, and 33-50 are allowed.

The prior art of record fails to teach in combination as claimed, a system for managing membership of nodes in a computer network cluster having a manager mechanism to

always grant membership in the network cluster to the node exclusively based on the node having access to the storage device or creating a message location on the sharable storage device. Also, regardless of network connectivity, denying membership in the computer network cluster to a node if the node is unable to access the sharable storage drive.

9. Claims 6-8, and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Prior Art Made of Record**

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

Moiin. (US Patent No. 6,108,699) discloses a method and apparatus for modifying membership in a clustered distributed computer network.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter Benson whose telephone number is (571) 272-2227. The examiner can normally be reached on Mon to Fri 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, N. Le can be reached on (571) 272-2233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter Benson  
Patent Examiner

May 8, 2004



N. Le  
Supervisory Patent Examiner  
Technology Center 2800